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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MORRIS CERULLO WORLD  
EVANGELISM et al.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

JOHN PAUL WARREN,

Real Party in Interest.

D038029

(Super. Ct. No. GIC748526)

PROCEEDINGS in mandate. Linda B. Quinn, Judge. Petition granted, with directions.

Plaintiff and real party in interest John Paul Warren is a Christian minister who was associated for several years with Morris Cerullo and his evangelical ministry, Morris

Cerullo World Evangelism (World Evangelism), a nonprofit corporation that has tax-exempt status with the Internal Revenue Service. (26 U.S.C.A § 501, subd. (c)(3).)

Warren has sued Cerullo individually and in his capacity as president of defendant World Evangelism, Warren's former employer, for damages for fraud and deceit. In addition, Warren makes the same fraud and deceit claims against World Evangelism, along with causes of action for violation of Labor Code section 970 (misrepresentations regarding relocation for employment), intentional interference with economic relationship, misappropriation of trade secrets, and partnership dissolution.

This writ proceeding has been brought by Cerullo and World Evangelism to challenge the trial court's ruling denying their motion for summary adjudication of issues on certain causes of action. (Code Civ. Proc.,<sup>1</sup> §§ 437c, 1085.) Resolving the issues presented requires us to discuss the interplay of tort theories in the employment context with constitutional First Amendment protections for the free exercise of religion and against its establishment by civil government. We are also required to consider the extent to which nonwork-related rights and duties may exist within a working relationship in the religious context.

As we will explain, we grant Cerullo's and World Evangelism's petition for writ of mandate, directing the trial court to enter a new order granting the summary adjudication motion as to the causes of action for fraud and deceit and violation of Labor Code section 970. However, except for those legal issues that we necessarily have resolved as law of

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<sup>1</sup> All statutory references are to this code unless otherwise stated.

the case, we do not reach the issues raised by certain causes of action left pending by the trial court's order, concerning Warren's newly added partnership allegations and his claims of intentional interference with an economic relationship. (*Kowis v. Howard* (1992) 3 Cal.4th 888.)<sup>2</sup>

## SUMMARY

These background facts are taken from Warren's complaint and the respective separate statements filed in connection with the summary adjudication motion. In 1995, real party in interest Warren was an established evangelical pastor of many years' standing, who led his own Northern California congregation in the Assemblies of God denomination, and who operated his own international ministry, Voice of the Nations.

Cerullo is an ordained minister who is the founder, president, chief executive officer, and chairman of the board of directors of World Evangelism. World Evangelism is a Christian crusade that travels all over the world and raises money as a nonprofit corporation to pursue its outreach. Its beliefs are similar to those of the Assemblies of God denomination, in which Cerullo was ordained. It is based in San Diego and is exempt from federal income tax as an organization that operates for religious purposes. World Evangelism has many divisions, including Mission to All the World (MTAW), in which Warren was particularly involved.

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<sup>2</sup> No challenge has been made to the portion of the ruling that summarily adjudicates against Warren his trade secret claims based on World Evangelism's acquisition of certain donor lists formerly controlled by Warren, and it is not affected by this writ proceeding.

In May 1995, Cerullo asked Warren to speak at a World Evangelism conference in India. Between that time and March 1998, Warren preached to and traveled with World Evangelism meetings and conferences. Beginning in 1997 through 1998, Cerullo asked Warren and his wife to move to San Diego and assist him full time in the World Evangelism enterprises. Warren alleges that these requests included promises to him that Warren would become a partner in World Evangelism, and was not an employee. Cerullo told Warren he needed a successor and Warren would fill this role. Cerullo told Warren that he would be the second in command and would have lifetime employment at World Evangelism. Cerullo anticipated there would be a ministry merger between World Evangelism and Warren's personal ministry, Voice of the Nations. Cerullo told the Warrens that Reverend Warren would speak at World Evangelism crusades, would be on television, and would have his own church, if he moved to San Diego from Northern California.

At Cerullo's request, Warren gave him his confidential Voice of the Nations ministry donor lists that he had compiled. Along with many other World Evangelism donors, Warren paid Cerullo \$1,500 in return for a promise of a satellite dish to allow access to World Evangelism's Global Prayer Satellite Network. World Evangelism calls its donors "partners."

Between December 1997 and June 1998, Warren and Cerullo continued to discuss the plans for Warren to move to San Diego to pursue the partnership in World Evangelism. Cerullo unilaterally moved ahead with the plan in March 1998 by announcing to Warren's then-current congregation that Warren was leaving Northern

California to move to San Diego. However, when Warren arrived here, he found he was not second in command, but instead was only one of several senior executive vice presidents and associate ministers of World Evangelism, who headed its different divisions. For one and one-half years, Warren performed many duties for Mission to All the World in particular, arranging administrative details for its international crusades and participating in them as a preacher. Warren never received the satellite dish for which he had made a specific contribution. He received a salary of approximately \$130,000 yearly.

Although Warren handled the administrative details of several World Evangelism conferences and crusades, it was evidently not to Cerullo's satisfaction. In April 1999, Cerullo dismissed him, then withdrew the dismissal, but again dismissed Warren in June 1999 and October 1999. Warren announced at a ministry event that he had been released from Cerullo and would be continuing to perform his ministry worldwide.

Warren then filed this action alleging fraud and deceit against both Cerullo and World Evangelism, alleging that Cerullo used unethical and fraudulent fund raising techniques and had made promises without intention to perform about the partnership offered to Warren on the condition he relocate to San Diego and give up his prior ministry. Warren also alleged World Evangelism had violated Labor Code section 970 by making false representations to induce Warren to relocate, concerning the type of

work he would be performing and for what length of time, and about the compensation due for the work.<sup>3</sup>

In addition to the first two causes of action against World Evangelism, Warren sought damages for intentional interference with economic relationship, alleging that in the year 2000, after Warren cut his ties with Cerullo, World Evangelism attempted to interfere with Warren's efforts to obtain alternative employment with the denomination in which he was ordained, Assemblies of God. Trade secret claims were also alleged based on the donor lists.

Cerullo and World Evangelism answered the complaint and filed a cross-complaint (not at issue here). After participating in extensive discovery, they brought a motion for summary adjudication of issues based on the theory that the complaint presented only an internal religious employment dispute between minister and church which had no place in the civil courts, because of First Amendment protections. Another defense raised was litigation privilege as it applied to the cause of action for intentional interference with economic advantage (Civ. Code, § 47, subds. (b), (c)). With respect to the fraud action against Cerullo individually, the motion argued that his actions were taken only as an agent for a disclosed principal, World Evangelism, and thus no

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<sup>3</sup> Labor Code section 970 provides in pertinent part: "No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State . . . for the purpose of working in any branch of labor, through or by means of knowingly false representations . . .," concerning certain enumerated circumstances of employment, such as the character or duration of the promised work, etc.

individual liability existed. The motion attacked the complaint as a whole and also each cause of action individually.

In opposition to the motion, Warren argued that he entered into a partnership with Cerullo and World Evangelism in March 1998, when he moved to Southern California. Warren's position was that he was not hired as a minister of the gospel, but rather functioned primarily in a secular position as administrator of the Mission to All the World campaign. He contends that both Cerullo individually and his organization, World Evangelism, entered into the lifetime partnership agreement, which was both oral and written.

After issuing a telephonic ruling and hearing oral argument, the trial court granted the motion in part and denied it in part. It was denied on the fraud/deceit and relocation claim under the Labor Code, granted as to the trade secret claims, and continued as to the intentional interference with economic advantage claim. Subsequently, the trial court granted a motion to amend to add a sixth cause of action, for dissolution of partnership and an accounting. This petition followed.

## DISCUSSION

### I

#### *PROCEDURAL STATUS OF ACTION*

The motion for summary adjudication or judgment by Cerullo and World Evangelism sought orders in their favor on the entire complaint, as well as each cause of action specifically. In its order, the trial court denied summary adjudication as to the first and second causes of action, on the basis that triable issues of material fact existed as to

whether the claims arose out of or related to an employment dispute, as opposed to a partnership that Warren purportedly entered into with Cerullo and World Evangelism, as well as whether Cerullo entered into such a partnership or knowingly made false representations without an intention to perform. A continuance was granted as to the third cause of action for intentional interference with economic relationship for further discovery. Summary adjudication on the trade secret causes of action (nos. 4 and 5) was granted, and Warren has not challenged that ruling.

Three days after this telephonic ruling was confirmed, the trial court granted leave to amend the complaint to add a separate sixth cause of action for dissolution of partnership and an accounting. Accordingly, the summary adjudication motion could not have addressed that claim, although Warren had requested judicial notice of the pending motion to amend during the summary judgment proceedings. Subsequently, this court imposed a stay in connection with the granting of the order to show cause on the petition, staying the trial court hearing on the summary adjudication motion regarding the interference with economic advantage claim and the scheduled trial date.

Therefore, although the summary adjudication or summary judgment motion attempted to address all existing causes of action, the actual ruling that we review finally disposed only of the trade secret claims, which are not at issue here. The petition for writ of mandate specifically addresses only the first cause of action for fraud and deceit and the second cause of action for misrepresentations in connection with relocation under Labor Code section 970. There have been no Superior Court rulings yet on the remaining claims for intentional interference with economic advantage or the dissolution of

partnership request, and the petition does not seek orders regarding those particular claims. Our disposition of the petition will allow the Superior Court to conduct further proceedings as appropriate on both pending causes of action.

However, the trial court and parties must be advised that such further proceedings will be subject to the doctrine of law of the case, which clearly applies to pretrial writ proceedings. Where, as here, an appellate court has issued an alternative writ, received full briefs in the matter, offered an opportunity for oral argument, and decided the cause by a written opinion, "[t]he resultant holding establishes law of the case upon a later appeal from the final judgment." (*Kowis v. Howard, supra*, 3 Cal.4th at p. 894.) In general, this doctrine does not give any conclusive effect to determinations of questions of fact, except where the sufficiency of the evidence as a matter of law has been determined. Rather, the doctrine of the law of the case applies only to the principles of law laid down by the court, as applicable to any retrial on the facts. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 901, pp. 936-937.)

It should also be noted that although the general rule is that law of the case will not apply to points that were not decided by the appeals court, there is an important exception: "Where the particular point was essential to the decision, and the appellate judgment could not have been rendered without its determination, a necessary conclusion in support of the judgment is that it was determined. With respect to such a point, the appellate decision is law of the case even though the point was not raised by counsel or expressly mentioned." (9 Witkin, Cal. Procedure, *supra*, Appeal, § 913, pp. 948-950.) Even though our review here is limited to the order on the first and second causes of

action, the legal conclusions we draw on essential points about those two will provide valuable guidance to the trial court in the future proceedings on the two reserved causes of action. With this in mind, we proceed to examine the legal issues actually presented, on the fraud/deceit and the relocation misrepresentation claims in this particular factual context. (Lab. Code, § 970.)

## II

### *INTERSECTION OF CONSTITUTIONAL PRINCIPLES AND CIVIL DISPUTE RESOLUTION*

#### A

##### *First Amendment*

The First Amendment to the United States Constitution provides with respect to religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." As well explained in *Schmoll v. Chapman University* (1999) 70 Cal.App.4th 1434 (*Schmoll*), based on these principles, the courts have developed a general rule barring judicial review of employment disputes between religious organizations and their clergy employees (known as the ministerial exception). The reason for the rule is stated in case law such as *Rayburn v. General Conference of Seventh-Day Adventists* (4th Cir. 1985) 772 F.2d 1164, 1168 (*Rayburn*): "Any attempt by government to restrict a church's free choice of its leaders . . . constitutes a burden on the church's free exercise rights." The importance of religious leadership decisions, and their incompatibility with civil secular adjudication of associated employment disputes, were explained in the leading case of *McClure v. Salvation Army* (5th Cir. 1972) 460

F.2d 553: "The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. . . . Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection. It is unavoidably true that these include the determination of a minister's salary, his [or her] place of assignment, and the duty he [or she] is to perform in the furtherance of the religious mission of the church." (*Id.* at pp. 558-559.)

This court further explained the doctrine in *Higgins v. Maher* (1989) 210 Cal.App.3d 1168 (*Higgins*), an action by a priest for wrongful termination and other types of theories against his bishop and the diocese that had employed him:

"[S]ecular courts will not attempt to right wrongs related to the hiring, firing, discipline or administration of clergy. Implicit in this statement of the rule is the acknowledgment that such wrongs may exist, that they may be severe, and that the administration of the church itself may be inadequate to provide a remedy. [But] [t]he preservation of the free exercise of religion is deemed so important a principle as to overshadow the inequities which may result from its liberal application. In our society, jealous as it is of separation of church and state, one who enters the clergy forfeits the protection of the civil authorities in terms of job rights." (*Id.* at p. 1175.)

Even if a claim by a clergy member against a religious institution is framed in terms other than wrongful termination, such as breach of contract or public policy, invasion of privacy, defamation or infliction of emotional distress, the same constitutional considerations will apply to the religious or doctrinal aspects of the interpersonal dispute. (*Higgins, supra*, 210 Cal.App.3d at pp. 1175-1176; *Schmoll, supra*, 70 Cal.App.4th at pp. 1442-1445.) Both clauses of the First Amendment, the free

exercise clause and the establishment clause, must be considered in determining whether a plaintiff's claim is subject to judicial review. The threshold issue is whether the state's interest in addressing such a dispute is of "sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 214, as quoted in *Conley v. Roman Catholic Archbishop of San Francisco* (2000) 85 Cal.App.4th 1126, 1132 (*Conley*).) Stated another way, a church/state contest is decided by "balancing . . . the burden on free exercise against the "impediment to . . . [the state's] objectives that would flow from recognizing the claimed . . . exemption." [Citation.]" (*Schmoll, supra*, 70 Cal.App.4th at p. 1442, citing *Rayburn, supra*, 772 F.2d at p. 1168.)

Further, in evaluating the state's interest in giving a forum to a particular dispute, it must be determined whether the resolution of the dispute, as requested, would foster "an excessive government entanglement with religion," in violation of the establishment clause. (*Lemon v. Kurtzman* (1971) 403 U.S. 602, 613.)

## B

### *Areas Exempt from Absolute First Amendment Protections*

Warren contends his causes of action fall outside the parameters of these well-established rules as they have evolved within the context of employment disputes between clergy members and religious hierarchies. He alleges, first, the claims at issue here, fraud/deceit and Labor Code section 970, are not precisely employment disputes, but rather are alternative types of tort theories, based on partnership facts that are generally pled (and have been specifically added by recent amendment). He chiefly

contends he was acting in Cerullo's employ in a purely secular capacity, as an administrator of a traveling show, which should remove him from ecclesiastical doctrinal limitations on pursuing his case.

In contrast, Cerullo and World Evangelism contend the religion clauses of the First Amendment bar judicial review of disputes between ministers and churches concerning choice of leaders and perception of ministerial needs, no matter what label is assigned to the claim. Further, they argue, it makes no difference "whether the ministerial relationship is a traditional employer/employee relationship, or some other type such as partnership, independent contractor, volunteer, trainee, novice or shareholder." We will confine our discussion to the facts actually before us, involving the overall partnership allegations made to support the fraud and deceit claims, as well as the relocation claims. As we have already emphasized, however, it has not yet been determined in the trial court or here the extent to which there may be any state civil jurisdiction over the two remaining causes of action.

It is well established that the First Amendment does not immunize the church from all temporal claims made against it. (*Minker v. Baltimore Annual Conference of United Methodist Church* (DC Cir. 1990) 894 F.2d 1354, 1361 (*Minker*); *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1086.) In support of Warren's arguments that these are nonreligious claims, he relies on authority such as *Higgins v. Maher, supra*, 210 Cal.App.3d 1168, in which this court acknowledged that churches and their congregations and hierarchy "are as amenable as other societal entities to rules governing property rights, torts and criminal conduct." (*Id.*

at p. 1170.) Even if some ecclesiastical matters are incidentally involved, the courts will assert jurisdiction over controversies within religious bodies, as long as civil or property rights are at stake. (*Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55 (*Providence Baptist Church*) [court considered whether a church had followed its own bylaws and internal procedures in discharging a pastor].) For example, where real property of the organization and funds collected are involved, internal disputes about them may be cognizable in the civil courts. (*Id.* at pp. 60-61; see *Vukovich v. Radulovich* (1991) 235 Cal.App.3d 281, 292.) In such cases, the secular courts need not resolve ecclesiastical disputes over discipline, faith, church governments or doctrine, which are areas in which they will not tread. (*Serbian Orthodox Diocese v. Milivojevic* (1976) 426 U.S. 696, 713-714.)

Other secular values may also be vindicated even where First Amendment considerations are raised. For example, in *Conley, supra*, 85 Cal.App.4th 1126, the court of appeal ruled that a complaint by a member of the clergy seeking relief against his superiors for defamation and infliction of emotional distress posed substantive issues that were properly before the civil courts. The plaintiff clergy person claimed his superiors' conduct amounted to imposing sanctions for making reports of suspected child abuse, sanctions which the statute forbade. (Pen. Code, § 11166.) The court held such allegations were entitled to judicial review, because the balance weighed in favor of the state's interest in protecting children, and privileged reporting must not be penalized. (*Conley, supra*, 85 Cal.App.4th at p. 1132.)

In *Minker, supra*, 894 F.2d 1354, the federal appellate court granted a motion to dismiss a clergy person's claims against his church employers that were based on federal age discrimination legislation and church doctrinal manuals, by finding these were protected areas. However, the court allowed Minker's oral contract claim to survive the motion to dismiss, on the rationale that:

"As a theoretical matter, the issue of breach of contract can be adduced by a fairly direct inquiry into whether appellant's superintendent promised him a more suitable congregation, whether appellant gave consideration in exchange for that promise, and whether such congregations became available but were not offered to Pastor Minker. Similarly, Minker's injury can be remedied without court oversight. Money damages alone would suffice since Minker already has a new pastorate. Maintaining a suit, by itself, will not necessarily create an excessive entanglement. Furthermore, as the remedy would be limited to the award of money damages, we see no potential for distortion of church appointment decisions from requiring that the Church not make empty, misleading promises to its clergy. [¶] *It could turn out that in attempting to prove his case, appellant will be forced to inquire into matters of ecclesiastical policy even as to his contract claim. Of course, in that situation, a court may grant summary judgment on the ground that appellant has not proved his case and pursuing the matter further would create an excessive entanglement with religion. On the other hand, it may turn out that the potentially mischievous aspects of Minker's claim are not contested by the Church or are subject to entirely neutral methods of proof.* The speculative nature of our discussion here demonstrates why it is premature to foreclose appellant's contract claim. Once evidence is offered, the district court will be in a position to control the case so as to protect against any impermissible entanglements. Thus, while the first amendment forecloses any inquiry into the Church's assessment of Minker's suitability for a pastorate, even for the purpose of showing it to be pretextual, it does not prevent the district court from determining whether the contract alleged by Minker in fact exists. [Citation.]" (*Id.* at pp. 1360-1361 (emphasis added).)

### III

#### ANALYSIS

To analyze Warren's arguments in light of all the above authority, we examine the summary adjudication papers to determine if there is a sufficient state interest in adjudicating this particular dispute that will "override the interest claiming protection under the Free Exercise Clause." (*Wisconsin v. Yoder*, *supra*, 406 U.S. at p. 214, as quoted in *Conley*, *supra*, 85 Cal.App.4th at p. 1132.) If resolution of the dispute, as requested, would foster "an excessive government entanglement with religion," in violation of the establishment clause, then the civil courts should refrain from inquiring into the merits of the dispute. For example, where addressing the merits of the dispute would implicate theological or doctrinal issues, the civil courts will not cross that threshold. (*Schmoll*, *supra*, 70 Cal.App.4th at p. 1442, fn. 8.)

However, to the extent a primarily secular dispute involving property rights or torts is presented, with only incidental involvement of any ecclesiastical matters, the courts have a duty to adjudicate such matters as are properly brought before them. (*Providence Baptist Church*, *supra*, 40 Cal.2d 55.) This inquiry must address both the nature of the activities by the defendants that have allegedly infringed upon the plaintiff's rights, and the nature of the interests for which the plaintiff seeks vindication.

#### A

##### *Nature of Defendant/Petitioner Cerullo's Activities as Religious or Secular*

In his complaint, Warren consistently describes the activities by Cerullo and World Evangelism in which he was invited to participate as predominantly religious in

nature. He describes his concern about leaving his ministries in Northern California, and outlines the representations made by Cerullo to induce him to relocate as pertaining to Warren's proposed place in the leadership of the World Evangelism ministry. These included opportunities to speak at World Evangelism crusades, an opportunity to obtain a church for Warren to head, television exposure on religious programming, and participation in the global prayer satellite network. All these items are well within the scope of church leadership activity within modern organized religion. However, they are also alternatively described in terms of the World Evangelism corporate flowchart showing the leadership structure of the organization. Warren also makes allegations about Cerullo's unethical and fraudulent fund raising techniques, which he describes as integrity issues, also presumably within the context of leadership issues of the World Evangelism organization.

In contrast, in opposition to summary adjudication and to the writ petition as filed in this court, Warren recharacterizes his participation in these activities as essentially secular in nature, resembling administrative activity in any large organization that requires technical skills. Going beyond his pleadings, Warren now takes the position that World Evangelism is neither a church nor affiliated with any religious institution:

"Instead, it is a traveling show that takes on the appearance of a revival movement. Mr. Warren was hired as the events coordinator for this show. Although Mr. Warren is an ordained minister with the Assemblies of God and has taken the stage on occasion at MCWE events, his primary job responsibilities with MCWE were to supervise and coordinate the logistics of staging MCWE Mission to All the World events in various regions of the world."

In support of his arguments, Warren cites deposition testimony by Cerullo that it was expected that Warren was to handle the nuts and bolts and logistics of the ministry activity around the world, to relieve Cerullo of that burden. Warren appears to request a finding by this court that World Evangelism is not a "church" or "religious institution" for purposes of applying the case law that would bar judicial review of employment-related claims in the religious context. He relies on criteria provided by the Internal Revenue Service for determining whether a religious institution is entitled to tax-exempt status. (See, for citation purposes, *Spiritual Outreach Soc. v. C.I.R.* (8th Cir. 1991) 927 F.2d 335, 338.) The purpose of this argument is to demonstrate that there are triable issues of fact as to whether Warren was acting as a "minister" during his association with World Evangelism, as well as whether World Evangelism constitutes a "church" or "religiously affiliated organization" as those terms are used in this specific context.

It is highly questionable whether this court has jurisdiction to review for these purposes whether World Evangelism is entitled to church status, when the IRS has already allowed it such status for tax purposes. (26 U.S.C.A. § 501, subd. (c)(3); 26 U.S.C.A. § 7801 et seq.) Even if we were inclined to inquire into this area, Warren has given us no persuasive reason to do so. He has failed to demonstrate that there are any triable material issues of fact as to whether the individual defendant Cerullo or the corporate defendant World Evangelism actually have the necessary character as religious officials or entities, such as would require the civil courts to refrain from inquiring into their employment decisions. For example, it is not dispositive that most or all members

of World Evangelism already belong to other churches, or that World Evangelism is not itself a denomination.

More importantly, Warren has not shown his duties were outside the scope of the religious activities of the organization. Although the record demonstrates that there are certain secular aspects to the fund raising and operational components of the World Evangelism organization, when we read the complaint together with the summary adjudication papers, we see that this entire dispute is steeped within the atmosphere and language of Christian evangelism, and the internal leadership disputes pled are inseparable from the doctrinal and hierarchical components of that form of religious beliefs. Taking the papers as we find them, we are unable to distinguish any meaningful separate secular character of the defendants' operations that would require us to treat portions of these defendants' activities separately from the religious aspects of the conduct that adversely affected Warren.

Moreover, to the extent that Warren is attempting to act as a whistleblower or class representative who is seeking to redress wrongful conduct in the area of fund raising or unethical behavior, his complaint as currently pled is so individualized in nature that he has not provided facts or law that would enable him to pursue such relief. Rather, the gist of the complaint, including the partnership allegations, is that Warren was unfairly treated in his professional relationship with the defendants, totally, if unfortunately, within the context of their common beliefs and goals as Christian ministers. Accordingly, we must decline to make any finding that for the purposes of Warren's

complaint, Cerullo and World Evangelism may not be treated as religious figures whose clergy-related employment decisions are within a protected sphere.

## B

### *Nature of Real Party Warren's First and Second Causes of Action*

Turning from the defendants' characteristics to those of the plaintiff, Warren's claims against Cerullo as an individual for fraud and deceit are essentially the same as his claims against World Evangelism. Both are based upon the partnership language that he was more than a mere employee who was induced to relocate to perform certain specified duties. Instead, he characterizes the promises that were made to him regarding his future status (as a partner, successor, second in command, and crusade speaker with television exposure) as sufficiently secular to bind both defendants to civil liability for damages for his relocation expenses and also for the use of his donor list. However, although Warren seeks damages of \$500,000 for the relocation and termination of employment, he does not specify the particular manner in which he was damaged. For example, although his opposition to the petition argues that his alleged lifetime partnership contract was breached, it is not made clear what portion of the World Evangelism corporate enterprises were allegedly to be subject to the control of the alleged partnership. Moreover, World Evangelism calls all its donors "partners," and Warren has not fully explained how that term has special meaning here.

With respect to Warren's civil cause of action under Labor Code section 970, he seeks double damages as measured by the \$1,000 fine that is prescribed for violation of the section. (Lab. Code, §§ 971, 972.) The misrepresentations alleged were the

persuasion to him to relocate for the purpose of working in the World Evangelism enterprises, and the circumstances of employment as promised.

In his opposition to the summary adjudication motion, Warren contended he was not hired for religious duties as a minister of the gospel, but actually functioned primarily in a secular position as administrator of the Mission to All the World campaign. In the opposition to Cerullo's petition filed in this court, Warren contends his claims arose out of conduct that occurred prior to and throughout his involvement with World Evangelism, and that his economic relationships were interfered with after his involvement with the ministry terminated. He claims he was wrongfully deprived of the advantages of his contract of partnership, independent of any employment decision by World Evangelism. In his view, the religious aspect of the church-minister employment relationship that warrants heightened constitutional protection is not present in this case, due to the kind of functions he performed and due to the timing of the tortious acts.

In reviewing this summary judgment ruling, our task is to identify the issues framed by the pleadings and determine the efficacy of the moving parties' showing to negate the opponent's claims and justify judgment in their favor. We must then examine on a de novo basis whether the opposition demonstrates the existence of any triable issues of material fact. (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838.) Here, that exercise involves the proper characterization of the nature of these allegations as representing predominantly secular relationships or those predominantly based in religious values or belief structures. We must inquire whether ecclesiastical concerns are

only "incidentally" involved. (*Providence Baptist Church, supra*, 40 Cal.2d at pp. 60-61.)

In an effort to obtain guidance for this task in this somewhat nebulous factual context, we have turned to authority in a comparable but procedural context, dealing with the standard of review of mixed questions of fact and law. The Supreme Court in *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791 discussed that problem as follows, quoting *People v. Louis* (1986) 42 Cal.3d 969, 986-987: One must look to the nature of the inquiry that is required "'to decide "whether the rule of law as applied to the established facts is or is not violated." [Citation.] If application of the rule of law to the facts requires an inquiry that is "essentially factual," [citation]—one that is founded "*on the application of the fact-finding tribunal's experience with the mainsprings of human conduct*," [citation]—the concerns of judicial administration will favor the [trial] court, and the [trial] court's determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us *to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles*, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo.'" (*Id.* at pp. 800-801, emphasis added, citing *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 809-810.)

Here, both approaches discussed in *Ghirardo, supra*, 8 Cal.4th 791 are of value. Religious expression is historically one of the most basic of the mainsprings of human conduct, and is integral to this entire dispute. But by the same token, the constitutional

values expressed in the First Amendment are legal concepts to be considered in the mix of fact and law, and this court cannot avoid exercising its judgment about the values which inform the applicable legal principles in the context of this dispute. To apply both of these contrasting factors, we analyze the record in these writ proceedings to determine the dominant character of the facts as pled and the relief as requested.

This record as a whole demonstrates an inescapable religious character of this dispute that is inextricably tied up with the spiritual beliefs of the participants. Although Warren has alleged that he performed duties that were not strictly religious in nature, the overall purpose of the administrative duties that he undisputedly performed was to present and promote a particular religious worldview, in common with other participants in the World Evangelism operation. None of his duties as alleged can strictly be characterized as purely secular in nature, because even if technical or operational in character, they took place in the context of religious programming and religious fund raising. Also, it is not disputed that on occasion, Warren took part in preaching spiritual messages during portions of the "traveling shows" or religious programming that he assisted in presenting and promoting. There is no need for this court to review the proffered 30 videotapes of such activity to establish this point. Accordingly, Warren has failed to show that the alleged partnership that he was offered was dominantly secular in nature, or that the damages that he alleged were separate from those incurred in connection with his employment status as a religious figure. As such, the civil courts must refrain from crossing the threshold of this essentially internal matter of a religious body and its personnel operations, due to the protections of the free exercise clause.

Similarly, with respect to the alleged misrepresentations made to induce Warren to relocate (Lab. Code, § 970), the record discloses that they all occurred within the ambit of his activities as a religious figure, in company with those with congenial beliefs, and in the context of advancing his career, together with the advancement of the faith that both professed. It is true that in some cases, promissory fraud can be pled in the context of fraudulent inducement of an employment contract. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 640-643, 648-649.) In this case, the facts shown, together with Warren's pleading of Labor Code section 970, place this claim firmly within the employment context. However, he has not shown that the nature of the employment alleged was other than wholly religious in nature. Unlike in the case of *Minker, supra*, 894 F.2d at pp. 1360-1361, we may draw this conclusion on an undisputed record, not merely on the pleadings.

Moreover, with respect to the fraud/deceit and relocation causes of action, we believe that sorting out the secular and religiously-based reasons for the respective parties' conduct, and whether it is actionable, would amount to "an excessive government entanglement with religion," in violation of the establishment clause. By reaching these conclusions, we do not in any way mean to minimize our concerns with the serious allegations raised about fraudulent and deceptive fundraising and use of donations. Nevertheless, the manner in which this complaint is framed and the individualized nature of these allegations and proof preclude our inquiry into those matters at this time. In sum on this record, the trial court's order was unjustified and a different order must be entered according to the views set forth in this opinion.

## DISPOSITION

The stay is dissolved and the petition for writ of mandate is granted as follows:

The trial court is directed to vacate its order denying summary adjudication of issues as to the first and second causes of action, and to enter a new order granting the motion as to those claims, as well as the trade secret causes of action as previously ordered. The new order should also reflect that further proceedings will take place as appropriate on the remaining causes of action for intentional interference with economic relationship and for dissolution of partnership. Each party to bear its own costs on appeal.

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HUFFMAN, Acting P. J.

WE CONCUR:

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McINTYRE, J.

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O'ROURKE, J.